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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

FLOOD BROTHERS PLUMBING, INC., Plaintiff, v. THE FLOOD BROTHERS, INC., and DOES 1-5, inclusive, Defendants.	Case No.: 2:17-cv-02511 **COMPLAINT FOR:** **1. COMMON LAW TRADEMARK INFRINGEMENT;** **2. TRADEMARK DILUTION –Cal. Bus. & Prof. Code § 14247;** **3. COMMON LAW UNFAIR COMPETITION;** **4. UNFAIR COMPETITION - Cal. Bus. & Prof. Code § 17200, et seq.;** **5. DECLARATORY JUDGMENT.** **DEMAND FOR JURY TRIAL**

Plaintiff FLOOD BROTHERS PLUMBING, INC. ("FBP"), a California corporation, by its attorneys, and as for its complaint against Defendants THE FLOOD BROTHERS, INC. ("TFB"), a California corporation, alleges as follows:

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction over the common-law trademark infringement, trademark dilution and unfair competition claims pursuant to 28 U.S.C. § 1338.

2. This Court has subject matter jurisdiction over the remaining claims pursuant to 28 U.S.C. § 1367 as those claims arise from and are related to the same set of facts as FBP's Federal claims.

3. This Court has personal jurisdiction over Defendants based on the fact that Defendants conduct business within this district, and the acts complained of occurred in this district.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391 because the claims asserted in this action arise out of wrongful acts by Defendants within this district and Defendants are subject to personal jurisdiction in this district at the time the action is commenced.

NATURE OF THE ACTION

5. FBP brings this action against Defendants as a result of their deliberate and willful uses of FBP's trademarks without FBP's authority, and/or their causing, inducing or materially contributing to such uses, which constitute: (a) common law trademark infringement and unfair competition; and (b) violations of California Business and Professions Code §§ 14245 and 17200, *et. seq.*

6. FBP seeks to recover liquidated, actual, punitive and treble damages, along with Defendants' profits, as well as costs and attorneys' fees, arising from Defendants' conduct and permanent injunctive relief.

THE PARTIES

7. Plaintiff FBP is, and at all times mentioned herein was, a California corporation providing water damage restoration, mold mitigation, and plumbing services existing and doing business in Los Angeles, California.

8. Defendant TFB is, and at all times herein mentioned was, a California corporation, with its principal place of business in Los Angeles, California

9. FBP is unaware of the true names and capacities of Defendants sued herein as DOES 1 through 5, inclusive, and therefore sues these Defendants by such fictitious names. FBP will amend this complaint to allege their true names and capacities when ascertained. FBP is informed and believes and thereon alleges that each of the fictitiously named Defendants is responsible in some manner for the wrongs alleged herein, that FBP 's injuries were proximately caused by such Defendants, and that at all relevant times each was the agent and servant of the other Defendants and was acting within the course and scope of said agency and employment. These fictitiously named Defendants along with the Defendants named above are referred to collectively herein as "Defendants."

FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

A. FBP's Trademark Rights

10. FBP is a leading water damage restoration, mold mitigation, and plumbing company in Los Angeles, California.

11. FBP, and its predecessors, have been using trademarks incorporating the phrase FLOOD BROTHERS (the "FLOOD BROTHERS Mark") in connection with water damage restoration, mold mitigation, and plumbing services since at least as early as May 1, 2013 in the Los Angeles area.

12. FBP is the owner of the FLOOD BROTHERS Mark.

13. On February 7, 2017, FBP applied to register the FLOOD BROTHERS Mark with the U.S. Patent and Trademark Office ("USPTO"). The associated Serial Number is 87/327,767, claiming a first use date of May 1, 2013 for FLOOD BROTHERS.

14. FBP has used the FLOOD BROTHERS Mark in conjunction with its advertising and marketing efforts.

15. As a result of these efforts, FBP's customers and the general public in Los Angeles have come to associate the FLOOD BROTHERS Mark exclusively with FBP. The FLOOD BROTHERS Mark and the goodwill associated therewith is thus a valuable asset of FBP and a primary marker of the source and origin of FBP's services.

B. Defendants Infringe FBP's Trademark Rights

16. Upon information and belief, TFB is the owner of the website www.thefloodbrothers.net.

17. Upon information and belief, on or about November 2015, TFB began using, and has since been continuously using, the FLOOD BROTHERS Mark on its website and advertising materials in connection with water, mold, odor & fire remediation. Attached hereto as Exhibit A is a true and correct screenshot of www.thefloodbrothers.net.

18. TFB is using FBP's FLOOD BROTHERS Mark in an identical manner as FBP, even down to the water damage restoration, mold mitigation, and plumbing services offered. Thus, TFB's use of FBP's FLOOD BROTHERS Mark will cause confusion and deception to consumers with respect to plumbing, water damage restoration, and mold mitigation services.

19. TFB has never requested FBP's permission to make use of the FLOOD BROTHERS Mark, and FBP has never authorized TFB to do so. As such, TFB's use of the FLOOD BROTHERS Mark is in complete disregard of FBP's rights to control the FLOOD BROTHERS Mark.

20. On February 9, 2017, FBP, through counsel, sent to TFB a Cease & Desist Letter, informing TFB that TFB was, and still is, infringing FBP's FLOOD BROTHERS Trademark. Attached hereto as Exhibit B is a true and correct copy of the Cease & Desist Letter.

21. On March 1, 2017, TFB, through counsel, a Response Letter to the

Cease & Desist Letter. This Response Letter made no meritorious arguments, and offered to cease & desist using the FLOOD BROTHERS Mark in exchange for monetary compensation. Attached hereto as Exhibit C is a true and correct copy of the Response Letter.

FIRST CLAIM FOR RELIEF

(Common Law Trademark Infringement)

22. FBP incorporates herein by reference the allegations of the preceding paragraphs as though fully set forth herein.

23. FBP owns the FLOOD BROTHERS Mark for use with offering water damage restoration, mold mitigation, and plumbing services.

24. Defendants have used, and continue to use, the FLOOD BROTHERS Mark with offering water damage restoration, mold mitigation, and plumbing services.

25. Defendants' use of the FLOOD BROTHERS Mark creates a likelihood of confusion in the consuming public as to the actual source of services.

26. At the very least, Defendants' use of the FLOOD BROTHERS Marks leads to an initial consumer confusion, by redirecting users initially to TFB's website, rather than FBP's website.

27. Defendants' continued use of the FLOOD BROTHERS Mark without FBP's consent and/or causing, inducing, or materially contributing to such use constitutes Trademark infringement under California common law.

28. Irreparable harm to FBP is imminent as a result of Defendants' conduct, and FBP is without an adequate remedy at law. FBP is thus entitled to an injunction restraining Defendants, their officers, directors, agents, employees, representatives, and all other persons acting in concert with them, from engaging in further such infringing acts.

29. Defendants' acts were done intentionally and with knowledge of FBP's

rights, and thus constitute deliberate and willful-infringement.

30. As a result of this Trademark infringement, FBP has sustained and continues to sustain damages in an amount to be determined at trial, plus interest, costs, and attorneys' fees.

SECOND CLAIM FOR RELIEF

(Trademark Dilution – Cal. Bus. & Prof. Code § 14247)

31. FBP incorporates herein by reference the allegations of the preceding paragraphs as though fully set forth herein.

32. The FBP Trademark is distinctive in the Los Angeles, California region by virtue of its inherent and acquired distinctiveness, extensive use in said region, and the extensive advertising and promotional activity FBP has conducted in said region.

33. As a result of the inherent and acquired distinctiveness of the FBP Trademark, its extensive use in the Los Angeles County, California region, and the extensive advertising of the Trademark in said region, the Trademark has come to be widely recognized by the general public in said region as the primary designation of FBP's services.

34. Defendants' conduct constitutes dilution to the FBP Trademark and injury to FBP's business reputation in violation of California Business and Professions Code § 14247.

35. FBP is informed and believes that Defendants' conduct began after the FLOOD BROTHERS Mark became famous in its local market and that Defendants have acted deliberately, willfully, and knowingly.

36. As a proximate result of Defendants' conduct, FBP has been damaged, and will continue to be damaged unless Defendants are enjoined under California Business and Professions Code §14247 from using the FBP's Trademark. FBP has no adequate remedy at law for said damage.

37. Defendants' conduct was and is extreme, outrageous, fraudulent, and was undertaken in reckless disregard of FBP's rights. Such conduct supports an award of exemplary and punitive damages in an amount sufficient to punish and make an example of Defendants and to deter them from similar conduct in the future.

THIRD CLAIM FOR RELIEF

(Common Law Unfair Competition)

38. FBP incorporates herein by reference the allegations of the preceding paragraphs as though fully set forth herein.

39. Defendants' continued use of the FLOOD BROTHERS Mark without FBP's consent and/or causing, inducing, or materially contributing to such use constitutes unfair competition under common law.

40. Irreparable harm to FBP is imminent as a result of Defendants' conduct, and FBP is without an adequate remedy at law. FBP is thus entitled to an injunction, restraining Defendants, their officers, directors, agents, employees, representatives, and all other persons acting in concert with them, from engaging in further such unlawful acts.

41. Defendants' acts were done intentionally and with knowledge of FBP's rights.

42. As a result of Defendants' unfair competition, FBP has sustained and is continuing to sustain damages in an amount to be determined at trial, plus interest, costs, and attorneys' fees.

FOURTH CLAIM FOR RELIEF

(Unfair Competition – Cal. Bus. & Prof. Code § 17200, et seq.)

43. FBP incorporates herein by reference the allegations of the preceding paragraphs as though fully set forth herein.

44. FBP owns and enjoys Common Law Trademark rights to the FLOOD BROTHERS Mark, both in California and throughout the United States.

45. Defendants' conduct in appropriating the FLOOD BROTHERS Mark, for their own use and benefit, in complete disregard of FBP's rights and at FBP's expense, is unlawful, unfair, and fraudulent and thus constitutes unfair competition pursuant to California Business and Professions Code § 17200.

46. As a proximate result of Defendants' conduct, FBP has been damaged, and will continue to be damaged unless Defendants are enjoined from using the FLOOD BROTHERS Mark. FBP has no adequate remedy at law for said damage.

47. Defendants' conduct was extreme, outrageous, fraudulent, and was undertaken in reckless disregard of FBP's rights. Such conduct supports an award of exemplary and punitive damages in an amount sufficient to punish and make an example of Defendants and to deter them from similar conduct in the future.

FIFTH CLAIM FOR RELIEF

(Declaratory Judgment – 28 U.S.C. §§ 2201, 2202)

48. FBP incorporates herein by reference the allegations of the preceding paragraphs as though fully set forth herein.

49. Pursuant to 28 U.S.C. §§ 2201 and 2202, FBP seeks a declaratory judgment, declaring that Defendants are not entitled to registration, in California or the United States, of any Trademarks incorporating the FLOOD BROTHERS Mark, or any colorable imitation thereof.

50. FBP is the nationwide senior user of its Trademark, in connection with its services, as compared to Defendants and their use of FBP's Trademark.

PRAYER FOR RELIEF

WHEREFORE, FBP prays for judgment against Defendants as follows:

a. Granting preliminary and permanent injunctive relief restraining and enjoining Defendants, their officers, agents, employees, attorneys, and all those persons or entities in participation or concert with them from:

i. Using the FLOOD BROTHERS Mark or any other elements of the

FLOOD BROTHERS Mark, or any confusingly similar item, to sell, offer for sale, advertise, promote, or market its services;

ii. Engaging in any other conduct which falsely represents or has the effect of falsely representing that Defendants' services are licensed by, authorized by, provided by, sponsored by, or in any other way associated with FBP;

iii. Engaging in any other conduct constituting unfair competition with FBP, or acts or practices that deceive consumers or the public as to the source or origin of its services;

iv. Engaging in any other conduct that will dilute the distinctiveness and uniqueness of the FLOOD BROTHERS Mark;

b. Ordering Defendants to transfer to FBP ownership and control of the website www.thefloodbrothers.net, and enjoining Defendants from creating or operating any website having a url including the words "flood" or "brothers" and any colorable imitations thereof.

c. Ordering Defendants to deliver to FBP for destruction and/or certify that Defendants themselves have destroyed any and all advertising, promotional, and marketing materials or the like in their possession, custody, or control that Defendants have used or have the ability in the future to use in violation of FBP's Common Law Trademark Rights;

d. Ordering Defendants to file with this Court and serve on FBP within thirty (30) days after entry of the injunction a report in writing under oath setting forth in detail the manner and form in which Defendants have complied with the injunction;

e. Ordering Defendants to provide an accounting to FBP for any and all profits, gains, and advantages derived by their unlawful acts complained of herein;

f. Awarding FBP all of Defendants' profits and all damages sustained by FBP as a result of Defendants' unlawful acts complained of herein, and such other compensatory damages as the Court determines to be fair and appropriate;

g. Awarding attorneys' fees, as well as costs and disbursements;

h. A declaratory judgment declaring that Defendants are not entitled to registration or use of the FLOOD BROTHERS Mark, or any colorable imitations thereof;

i. Awarding FBP punitive and exemplary damages sufficient to penalize and make an example of Defendants and to deter them from similar such conduct in the future;

j. Such other and further relief as the Court deems just and proper.

HANKIN PATENT LAW, APC

/Marc E. Hankin/

Date: March 31, 2017

Marc E. Hankin
Attorneys for Plaintiff,
FLOOD BROTHERS PLUMBING, INC.

DEMAND FOR JURY TRIAL

Plaintiff FBP hereby demands a trial by jury of all issues so triable in this action.

HANKIN PATENT LAW, APC

/Marc E. Hankin/

Date: March 31, 2017

Marc E. Hankin
Attorneys for Plaintiff,
FLOOD BROTHERS PLUMBING, INC.